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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,720	01/17/2002	Michael Robert Dehart	DEH01-02	4224

7590 01/29/2004

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P.O. Box 27629

Houston, TX 77227

EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/053,720

Applicant(s)

DEHART ET AL.

Examiner

Joseph C Rodriguez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 21-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12,13 and 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15 and 24 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/17/2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: .

## **DETAILED ACTION**

### ***Priority***

Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed was filed 1/16/2001 and the instant application has a filing date of 1/17/2002, therefore as the provisional application was filed more than one year prior to the instant application priority cannot be granted.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 7, 14-15 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (US '733).

Regarding claims 1, 2, 5, 7, 24, Carlson teaches an apparatus (Fig. 1) comprising a hopper (near 4) with water means (50), a separator with an inlet (end of 8c) and a passageway (area in and around 10), a first outlet (near 50 or near 42), a second outlet (near 32), a rotatable screen (near 10) that screens the material passing through the passageway and a pump (9) that transfers material from the hopper to the separator, wherein the material is regarded as axially flowing (i.e., passing along center axis of screen) and the rotating screen is regarded as centrifugally directing material

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towards the first outlet through the screens substantially horizontal screening surface (i.e., screen apertures of a predetermined size) (Fig. 1, 3). Hereinafter, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114.

Regarding claim 4, Carlson also teaches drive means (near 18, 20).

Regarding claims 14 and 15, Carlson also teaches also teaches a water pump (26) for pumping water to the separator and a baffle (teeth near 6) with a predetermined aperture size (i.e., tooth spacing).

Claims 1, 3, 5, 7-11, 14 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Downerd (US '805).

Regarding claims 1, 3, 5, 7, 24, Downerd teaches an apparatus (Fig. 1) comprising a hopper (11) with water means (27), a rotatable screen (10, 14, 19) with a front inlet (near 12) and a passageway (area in and around screens), a first outlet (under the screen and near 13), a second outlet (near 28) and a water pump (near 26), wherein the rotating screen is regarded as centrifugally directing material towards the first outlet and the screen apertures are regarded as including apertures of a predetermined size. That is, the horizontally placed screens are regarded as providing a substantially horizontal screening surface (Fig. 1). Further, a separator is regarded as

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inherently surrounding the rotatable screens, wherein the material must pass through said screens.

Regarding claim 4, Downerd also teaches drive means (near 40).

Regarding claims 8-11, Downerd also teaches a sand tank (21), a first water holding tank (25) with an outlet (near bottom), a separator outlet line (20, 24), a second water holding tank (16) and a first water holding tank outlet line (27) that indirectly connect the two holding tanks.

Regarding claim 14, Downerd also teaches a water pump (17) for pumping water to the separator.

Claims 1-5, 7 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Singer (US '980).

Regarding claims 1-3, 5, 7, 24, Singer teaches an apparatus (Fig. 1) comprising a hopper (20) with water means (22, 29 near pump), a separator (12) with an inlet (near 25) and a passageway (area in and around 14), a first outlet (near 26, 27), a second outlet (near 13), a rotatable screen (near 14) that screens the material passing through the passageway and a pump (24) that transfers material from the hopper to the separator, wherein the rotating screen is regarded as centrifugally directing material towards the first outlet through the screens substantially horizontal screening surface (i.e., screen apertures of a predetermined size) (Fig. 1, 3). Hereinafter, a pump is regarded as any device that moves or transfers fluid.

Regarding claim 4, Singer also teaches drive means (near 15, 17, 18).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 7-11, 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downerd in view of Singer and/or Carlson.

Downerd as set forth above teaches all that is claimed. However, under an alternative interpretation a separator surrounding the rotatable screen(s) may not be considered inherent. This feature, however, is well-known in the sorting arts. For instance, Singer (Fig. 1) and Carlson (Fig. 1) both teach that it is well known to surround the rotating screen with a separator chamber for the common-sense purpose of controlling the material flow and preventing leakage. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Downerd as taught above.

***Allowable Subject Matter***

Claims 12, 13 and 21-23 are allowed.

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**Conclusion**

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-308-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-872-9326** (After-Final **703-972-9327**).

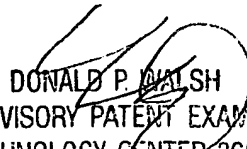
The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571** or **703-308-6552**.

The examiner's **UNOFFICIAL Personal fax number** is **703-746-3678**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

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January 26, 2004

  
DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600